



4310-05-P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

**[SATS No. PA-165-FOR; Docket ID: OSM-2016-0013;
S1D1S SS08011000 SX064A000 189S180110;
S2D2S SS08011000 SX064A000 18XS501520]**

Pennsylvania Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter, the Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Pennsylvania would modify its AMLR Plan by adding Reclamation Plan Amendment No. 3, to allow the Pennsylvania Department of Environmental Protection (PADEP) to administer a State

Emergency Program under Title IV of the Surface Mining Control and Reclamation Act of 1977. The plan covers coordination of emergency reclamation work between the Commonwealth and the OSMRE as well as procedures for implementing the National Environmental Policy Act and other Commonwealth procedures.

This document gives the locations and times where the Pennsylvania AMLR Plan documents and this proposed amendment to that Plan are available for your inspection, establishes the comment period during which you may submit written comments on the amendment, and describes the procedures we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing about the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. PA-165-FOR; Docket ID: OSM-2016-0013 by any of the following methods:

- Mail/Hand Delivery: Mr. Ben Owens, Chief, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA, 15220.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at www.regulations.gov, you may receive one free copy of the amendment by contacting OSMRE’s Pittsburgh Field Office (PFO). For access to the docket to review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you may go to the address listed below during normal business hours, Monday through Friday, excluding holidays.

Mr. Ben Owens, Chief, Pittsburgh Field Office
Office of Surface Mining Reclamation and Enforcement
3 Parkway Center
Pittsburgh, PA 15220
Telephone: (412) 937-2827
E-mail: bowens@osmre.gov

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Chief, Pittsburgh Field
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SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania AMLR Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Pennsylvania AMLR Program

The AMLR program was established by Title IV of SMCRA in response to concerns over threats to the health and safety of the public and environmental damage caused by coal mining activities conducted before the enactment of the Act. The program is funded by a reclamation fee collected on each active coal mine to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Tribes to assume exclusive responsibility for reclamation activity within the State or on Tribal lands if they develop and submit to the Secretary of the Interior (Secretary) for approval, a program for the reclamation of abandoned coal mines. The Secretary approved the Pennsylvania AMLR Plan, effective July 31, 1982. You can find background information on the Plan, including the Secretary's findings, the disposition of comments, and the approval of the Plan in the July 30 1982, Federal Register (47 FR 33083). You can find later actions concerning the Pennsylvania AMLR Plan and amendments to the Plan at 30 CFR 938.20 and 938.25.

II. Description of the Proposed Amendment

By letter dated November 22, 2016 (Administrative Record No. PA 898.00), Pennsylvania sent us an amendment to its AMLR Plan under SMCRA (30 U.S.C. 1201 et seq.).

Pennsylvania is requesting to modify the Commonwealth's Plan to allow the PADEP to administer a State Emergency Program under Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328). The coordination of emergency reclamation work between the Commonwealth and the OSMRE will be handled by the PADEP. The PADEP intends to follow Chapter 4-120 of OSMRE's Federal Assistance Manual (FAM) entitled, "State Emergency AML Reclamation Program." Coordination with other agencies for environmental clearance will be on a project specific basis as outlined in the "OSMRE Handbook on Procedures for Implementing the National Environmental Policy Act" and other Commonwealth procedures.

OSMRE notes that before September 30, 2010, OSMRE conducted emergency AML reclamation in Pennsylvania. Effective October 1, 2010, OSMRE transitioned emergency AML reclamation responsibilities to PADEP leading to the submittal of the proposed amendment. [Administrative Record Number PA 898.05]. The following are the proposed changes contained in Pennsylvania's submission.

A. Attached to the proposed program amendment are an official designation by the Governor of Pennsylvania in 1978 that the Department of Environmental Resources is the State Agency

authorized to implement and administer the Abandoned Mine Reclamation Program, and a 2016 memorandum from the PADEP's Office of Chief Counsel specifying PADEP's statutory authority to establish and administer an Emergency Program as part of its State AMLR Plan. The Office of Chief Counsel's memorandum notes that "Section 16 of the Land and Water Conservation and Reclamation Act (32 P.S. § 5116 (Allotment of moneys)) and the Mine Fire and Subsidence Remedial Project Indemnification Law (52 P.S. 30.201 - 30.206) provide PADEP the authority to conduct activities consistent with an Emergency Reclamation Program."

The proposed program amendment includes policies and procedures the Commonwealth will follow in conducting the Emergency Response Program. Emergency response reclamation activities involve entering upon any land where eligible abandoned coal mine related emergencies exist and doing all things necessary or expedient to protect the public health, safety or general welfare from the adverse effects of legacy coal mining practices. PADEP will handle the coordination of emergency reclamation work between the State and OSMRE as outlined in PFO's OSMRE Emergency Response protocol and using the procedures set out in OSMRE's FAM. PADEP will conduct all investigations and eligibility findings required by Title IV of SMCRA. When emergency conditions warrant an immediate response, the PADEP will initiate appropriate action upon receipt of an approval, a "Limited Emergency Response," or a verbal approval from OSMRE. A Limited Emergency Response is described in OSMRE's Federal Assistance Manual. The objective of the Limited Emergency Response is to stabilize the emergency aspects of the problem by eliminating the immediate danger to public health, safety, and welfare. Any remaining reclamation should then be accomplished as part of a regular non-emergency AML project.

B. PADEP may enter on any land where an emergency exists or on land adjacent thereto for access, to prevent the adverse impacts of the emergency in order to protect the public health, safety and general welfare. While PADEP will make all reasonable efforts to notify the landowners and receive consent for right of entry, the State will obtain access in accordance with 30 CFR 877.14 when property owners will not grant permission. All emergency project development, design, realty, construction, and administration will generally be done by PADEP, following the procedures used in the State's Non-Emergency Title IV Program.

On October 14, 2016, PADEP posted public notice that an opportunity existed for public comment on the draft amendment and specifically notified stakeholders of this opportunity. The public Notice was posted in the PA Bulletin on both PADEP's online eComment and on the Bureau of Abandoned Mine Reclamation websites. No comments were received.

C. Under the proposed amendment, PADEP may undertake an emergency project in any of the eligible coalfields found in Pennsylvania and these projects may involve any eligible legacy coal mining related problems. A site is eligible for AML funding if it was mined for coal or was affected by such mining, was abandoned or left in an inadequate reclamation status prior to August 3, 1977, the date of enactment of SMCRA, and if it is determined that there is no continuing reclamation responsibility under State or other Federal laws. See 30 U.S.C. § 1234. A site that was mined after August 3, 1977, may be eligible for AML funding if it meets the criteria in section 402(g)(4)(B)(i) or (ii). See 30 U.S.C. § 1232(g)(4)(B)(i) or (ii).

D. The proposed program amendment satisfies the objectives of the abandoned mine land

program as set out in Section 403 of SMCRA, FAM Chapter 4, OSMRE Directive AML-4 and the NEPA handbook, which are available at <https://www.osmre.gov>. The State has indicated that it will have the capability and the administrative structure to properly implement the Emergency Response Program as described in this amendment and is willing and able to work closely with OSMRE to ensure its success.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Pennsylvania's State Program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person

who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a plan amendment to OSMRE for review and that amendment changes the objectives, scope or major policies followed, our regulations at 30 CFR 884.14 and 884.15 require us either to hold a public hearing on a plan amendment or make a finding that the State provided adequate notice and opportunity for public comment. Pennsylvania has elected to have OSMRE publish a notice in the Federal Register indicating receipt of the proposed amendment and soliciting comments. We will conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 9, 2018

Thomas D. Shope, Regional Director

Appalachian Region

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